

1 **THE WESTON FIRM**

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8 **Class Counsel**

9  
10 **UNITED STATES DISTRICT COURT**  
11  
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 SHAVONDA HAWKINS, on behalf of  
14 herself and all others similarly situated,

15 Plaintiff,

16 v.

17 THE KROGER COMPANY,

18 Defendant.

19 Case No: 3:15-cv-02320-JM-AHG

20  
21 **DECLARATION OF GREGORY S. WESTON**  
22 **IN SUPPORT OF PLAINTIFF'S MOTION FOR**  
23 **PRELIMINARY APPROVAL OF CLASS**  
24 **ACTION SETTLEMENT**

25 Judge: The Honorable Jeffrey T. Miller

26 Date: June 7, 2020

27 Time: 10:00 a.m.

28 Location: Courtroom 5D

1 Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

2       1. I am a member in good standing of the California Bar and of this Court. I  
3 make this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class  
4 Action Settlement. I could testify to the matters contained herein if called upon to do so.

5       2. **Exhibit 1** is a true and correct copy of the Parties' proposed class-wide  
6 Settlement Agreement dated April 19, 2021.

7       3. **Exhibit 2** is a true and correct copy of the proposed summary or "short form"  
8 Class Notice.

9       4. **Exhibit 3** is a true and correct copy of the proposed complete or "long form"  
10 Class Notice.

11       5. **Exhibit 4** is a true and correct copy of the proposed claim form.

12       6. Defendant took the deposition of Plaintiff Shavonda Hawkins on January 3,  
13 2020.

14       7. No agreements were made in connection with the settlement aside from the  
15 Settlement Agreement itself.

16       8. Through the discovery process, we obtained sufficient information and  
17 documents to evaluate the strengths and weaknesses of the case.

18       9. The Parties did not agree to the settlement until after they had  
19 briefed class certification, a motion to reconsider class certification, and a Rule 23(f)  
20 Petition, submitted summary judgment motions, submitted pretrial materials, and  
21 exchanged settlement conference statements.

22       10. Pursuant to the Settlement Agreement, we may apply for an award of fees  
23 and costs of up to \$400,000. This capped amount is approximately 40% less than our  
24 actual lodestar to date. Further, we will devote additional work to the action in obtaining  
25 final approval of the Settlement.

26       11. I believe the settlement is fair reasonable.

27       I declare under penalty of perjury under the laws of the United States that the  
28 foregoing is true and correct.

Executed on April 20, 2021 in San Diego, California.

/s/ Gregory S. Weston  
Gregory S. Weston

DATED: April 20, 2021

Respectfully Submitted,

/s/ Gregory S. Weston  
**THE WESTON FIRM**

**Class Counsel**

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SHAVONDA HAWKINS, on behalf  
of herself and all others similarly  
situated,

Plaintiff,

v.

THE KROGER COMPANY,

Defendant.

Case No: 3:15-cv-2320-JM-AHG

**CLASS ACTION SETTLEMENT  
AGREEMENT**

Judge: The Honorable Jeffrey T. Miller

1        This Class Action Settlement Agreement (the “Settlement Agreement”) is made and  
2 entered into by and between Plaintiff Shavonda Hawkins, on behalf of herself and the  
3 Class she was appointed by the Court to represent, and Defendant Kroger Company  
4 (hereinafter “Kroger” or “Defendant”) (collectively “the Settling Parties”).

5                          **RECITALS**

6                          **PROCEDURAL BACKGROUND**

7        WHEREAS, this action, entitled *Hawkins v. The Kroger Co.*, 3:15-cv-2320-JM-  
8 AHG (C.D. Cal.), was filed in the U.S. District Court for the Southern District of  
9 California against Kroger, bringing claims under California’s Consumer Legal Remedies  
10 Act (Civ. Code § 1750, *et seq.* [“CLRA”]), Unfair Competition Law (Bus. & Prof. Code  
11 § 17200, *et seq.* [“UCL”]), and False Advertising Law (*id.* § 17500, *et seq.* [“FAL”]), as  
12 well as claims for breach of express and implied warranty, arising from Defendant’s  
13 marketing and sale of Kroger Bread Crumbs, as defined below (hereinafter “the  
14 Litigation”);

15       WHEREAS, based upon extensive discovery, investigation, and evaluation of the  
16 facts and law relating to the matters alleged in the pleadings of the Litigation, plus the  
17 risks and uncertainties of continued litigation and all factors bearing on the merits of  
18 settlement, the parties have conducted arm’s-length negotiations both before and during a  
19 formal mediation, and have agreed to settle the claims asserted in the Litigation pursuant  
20 to the provisions of this Settlement Agreement;

21       **NOW THEREFORE**, subject to the final approval of the Court, the Settling Parties  
22 hereby agree, in consideration of the mutual promises and covenants contained herein, and  
23 for other good and valuable consideration, that any Released Claims, as defined below,  
24 against any Released Parties, as defined below, shall be settled, compromised and forever  
25 released upon the following terms and conditions.

26                          **TERMS AND CONDITIONS OF THE SETTLEMENT**

27       **1. DEFINITIONS**

28       As used herein, the following terms have the meanings set forth below.

1       “CAFA Notice” means the notice of this Settlement to the appropriate federal and  
2 state officials in the United States, as provided by the Class Action Fairness Act of 2005,  
3 28 U.S.C. § 1715.

4       “Class” means all citizens of California who purchased, between January 1, 2010  
5 and December 31, 2015, Kroger Bread Crumbs containing partially hydrogenated oil and  
6 the front label claim “0g Trans Fat,” but not Defendant or any of its officers, directors,  
7 agents, representatives, employees, or other person affiliated with Defendant.

8       “Class Counsel” means The Weston Firm.

9       “Class Member” means members of the Class, which will eventually exclude those  
10 who file a timely Request for Exclusion in accordance with the provisions of the Notice  
11 Plan.

12       “Class Period” means January 1, 2010 through December 31, 2015.

13       “Court” means the U.S. District Court for the Southern District of California.

14       “Defendant” means The Kroger Company.

15       “Defense Counsel” means Defendant’s counsel of record in the Litigation, Jacob  
16 Harper, Heather Canner, and Nicole Phllis of Davis Wright Tremaine LLP.

17       “Effective Date” means the day the Court grants final approval to this settlement.

18       “Fairness Hearing” means the hearing that is to take place after entry of the  
19 Preliminary Approval Order and after Notice is distributed pursuant to the Notice Plan for  
20 purposes of determining (1) whether the terms and conditions of the Settlement  
21 Agreement are fair, reasonable, and adequate, and therefore the Settlement Agreement  
22 should be finally approved with entry of the Final Judgment and Order; (2) whether a  
23 judgment should be entered dismissing this action with prejudice in accordance with the  
24 Settlement Agreement; and (3) whether an order approving of fees, costs and incentive  
25 award should be entered.

26       “Final Judgment and Order” means an order and judgment substantially in the form  
27 of Exhibit A to this Agreement, entered by the Court approving this Settlement Agreement  
28 as final and binding on the Parties, Class Members, and Released Parties , pursuant to

1 Federal Rule of Civil Procedure 58(a), dismissing the Litigation with prejudice.

2       The “Litigation” means the action entitled *Hawkins v. Kroger Co.*, 3:15-cv-2320-  
3 JM-AHG (S.D. Cal.).

4       “Notice” means the “Class Notice,” to be disseminated in accordance with  
5 Preliminary Approval Order, informing the Class of, among other things, the pendency of  
6 the Litigation, the material terms of the Settlement Agreement, and their options with  
7 respect thereto.

8       “Notice Plan” means the method of providing the Class with Notice of the  
9 Settlement.

10      “Personal Injury” means a disease or adverse physical condition.

11      “Representative Plaintiff” means the named plaintiff in this action, Shavonda  
12 Hawkins.

13      “Plaintiffs” means the Representative Plaintiff and all Class Members.

14      “Preliminary Approval Order” means an order, providing for, among other things,  
15 preliminary approval of the Settlement and dissemination of the Notice to the Class  
16 according to the Notice Plan.

17      “Release,” “Released Persons,” and “Released Claims” are defined in the separate  
18 release section contained in Section 8 of this Settlement Agreement.

19      “Request for Exclusion” means a timely, written request from a Class Member who  
20 does not wish to participate in the Settlement to the Class Action Administrator, stating  
21 an intent to be “excluded from” or to “opt-out” of the Settlement.

22      “Settlement” means the settlement set forth in this Settlement Agreement.

23      “Settlement Agreement” means this agreement and its Exhibits, attached hereto and  
24 incorporated herein, including all subsequent amendments agreed to in writing by the  
25 Settling Parties and any exhibits to such amendments.

26      “Settling Parties” means, collectively, Plaintiffs (except for those Class Members  
27 that opt out of the Settlement in the manner provided herein) and Kroger.

28 **2. DENIAL OF WRONGDOING AND LIABILITY**

1       Kroger denies the material factual allegations and legal claims asserted in the  
2 Litigation, including any and all charges of wrongdoing or liability arising out of any of  
3 the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the  
4 Litigation. Similarly, this Settlement Agreement provides for no admission of wrongdoing  
5 or liability by any of the Released Persons. This Settlement is entered into solely to  
6 eliminate the uncertainties, burdens, and expenses of protracted litigation.

7 **3. THE BENEFITS OF SETTLEMENT**

8       Class Counsel and the Representative Plaintiff recognize and acknowledge the  
9 expense and length of continued proceedings that would be necessary to prosecute the  
10 Litigation through trial and further appeals. Class Counsel also has taken into account the  
11 uncertain outcome and the risk of any litigation, especially in complex actions such as the  
12 Litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel  
13 is mindful of the challenges it will face in maintaining class certification. Class Counsel  
14 is also mindful of the inherent problems of proof related to the claims and defenses to the  
15 claims asserted in the Litigation. Class Counsel believes that the proposed Settlement  
16 confers substantial benefits upon the Class, as well as a *cy pres* contribution to the  
17 American Heart Association that will benefit even Class Members who do not file a claim.  
18 Based on their evaluation of all of these factors, following briefing on the sufficiency of  
19 the complaint and the evaluation of documents produced, the Representative Plaintiff and  
20 Class Counsel have determined that the Settlement is in the best interests of the Class.

21 **4. MONETARY RELIEF – SETTLEMENT FUND**

22       Kroger agrees to pay a \$780,000 cash settlement to the class. Class Members will  
23 receive an estimated \$17.50 for claims not documented by receipts, up to \$100 if  
24 documented by receipts. Notice costs and settlement administrative expenses associated  
25 with distribution of large numbers of small payments not to exceed \$79,635 are to be paid  
26 out of this \$780,000 settlement fund. Kroger will not have any responsibility for the  
27 allocation of the settlement proceeds or the review of claims of Class Members.

28       If valid claims exceed the total amount to be paid from the \$780,000 settlement

1 fund less the settlement administrative expenses, the payments will be reduced on a pro  
2 rata basis. If valid claims are below the total amount of the fund, the payments will be  
3 increased pro-rata such that the fund is exhausted. Any funds remaining after the  
4 distribution, such as checks that are returned for incorrect addresses, or that are not cashed  
5 within 90 days, shall be paid by the Class Action Administrator as a *cy pres* payment to  
6 the American Heart Association, 9404 Genesee Ave., #240, San Diego, CA 92037.

7 **5. MONETARY RELIEF – *CY PRES***

8 Within 90 days of the Effective Date, Kroger will make a one-time payment of  
9 \$21,000 to the American Heart Association, 9404 Genesee Ave., #240, San Diego, CA  
10 92037.

11 This payment is separate from the payment to be made to the same organization by  
12 the Class Action Administrator of leftover funds from Class Members who make claims  
13 but whose checks are returned by the post office undeliverable, or who fail to cash their  
14 check after 90 days.

15 **6. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW AND  
16 APPROVAL**

17 As soon as practicable, within 30 days following the signing of this Settlement  
18 Agreement, Class Counsel shall seek preliminary approval of this agreement because it is  
19 within the range of reasonableness such that Notice should be provided pursuant to this  
20 Settlement Agreement.

21 **7. ADMINISTRATION AND NOTICE**

22 Class Counsel shall arrange for providing Notice to the Class in conjunction with  
23 the Class Action Administrator. Kroger has agreed to pay a \$780,000 cash settlement to  
24 the Class. Notice and administrative expenses of \$79,635 are to be paid out of this  
25 \$780,000 settlement fund.

26 **A. Appointment and Retention of Class Action Administrator**

27 The Class Action Administrator shall be Classaura LLC.

28 The Class Action Administrator shall be responsible for providing the Settling

1 Parties with assistance, as necessary, such as by preparing affidavits of work it has  
2 performed with respect to implementing the Notice Plan and providing regular updates to  
3 the Settling Parties' counsel. Defendant shall pay \$49,635 to the Class Action  
4 Administrator within five court days of an order granting preliminary approval to this  
5 settlement to cover the expenses associated with Class Notice and processing of claims.  
6 Defendant shall pay the balance of \$732,000 to the Class Action Administrator, consisting  
7 of the \$700,365 distribution and \$30,000 in costs for postage and check printing, within  
8 five court days of the later of (1) an order granting final approval to the settlement, if there  
9 are no objections to the settlement; (2) the time to file a timely appeal of the denial of  
10 objections has passed, if there are objections; (3) the day the Ninth Circuit affirms the  
11 order granting final approval if there are both objections and appeals of the denial of the  
12 objections, and the time for further appeals has elapsed.

13 **B. Class Settlement Website**

14 The Class Action Administrator will create and maintain a class settlement website  
15 (the "Class Settlement Website"), to be activated within seven (7) calendar days of its  
16 receipt of the Preliminary Approval Order. The Class Settlement Website will contain  
17 Settlement information and case-related documents such as this Settlement Agreement,  
18 the Preliminary Approval Order, the Notice, the Petition for Attorneys' Fees, Costs and  
19 Incentive Award (as described in Section 10), the Final Approval Motion, and notices  
20 from the Court. In addition, the Class Settlement Website will include procedural  
21 information regarding the status of the Court-approval process, such as an announcement  
22 of the Fairness Hearing date, when the Final Judgment and Order has been entered, and  
23 when the Effective Date has been reached, including any appeal(s).

24 The Class Settlement Website will terminate (be removed from the internet) and no  
25 longer be maintained by the Class Action Administrator within ten days of Final Approval  
26 if there are no objections, and within ten days of the time to appeal (or further appeal)  
27 expiring.

28 **C. CAFA Notice**

1           Defendant shall serve notice of the Settlement Agreement that meets the  
2 requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no  
3 later than ten (10) days following the filing of Plaintiffs' motion for preliminary approval  
4 of settlement with the Court.

5           **D. Notice Plan**

6           The Notice Plan, attached hereto as **Exhibit B**, shall conform to all applicable  
7 requirements of the Federal Rules of Civil Procedure, the United States Constitution  
8 (including the Due Process Clauses), and any other applicable law, and shall otherwise be  
9 in the manner and form agreed upon by the Settling Parties and approved by the Court.

10          The Class Action Administrator shall commence providing Notice to the Class  
11 according to the Notice Plan as attached in **Exhibit B**, as ordered by the Court in its  
12 Preliminary Approval Order.

13          The form of the claim forms or any other documents to be presented to potential  
14 Class Members will be agreed upon by the Settling Parties.

15          The Class Action Administrator shall be responsible for receiving all opt-out and  
16 other requests and correspondence from the Class Members to exclude themselves from  
17 the Settlement and provide to Class Counsel and Defense Counsel a copy thereof within  
18 three (3) days of receipt. The Class Action Administrator shall also receive and maintain  
19 all other correspondence from any Class Member regarding the Settlement and promptly  
20 provide such correspondence to Class Counsel and Defense Counsel. No later than seven  
21 (7) calendar days before the date of the Fairness Hearing, the Class Action Administrator  
22 shall provide to the Settling Parties and file with the Court a list of those persons who have  
23 submitted a valid Request for Exclusion, as described in Section 12 of this Settlement  
24 Agreement.

25          **8. RELEASES AND DISMISSAL OF ACTION**

26          Upon the Effective Date, Plaintiffs, except for those that have opted out, will be  
27 deemed to have, and by operation of the Final Judgment and Order will have, fully, finally,  
28 and forever released, relinquished, and discharged the Released Persons from all Released

1 Claims, meaning any and all causes of action, claims, suits, debts, damages, judgments,  
2 liabilities, demands, and controversies of every nature and description whatsoever—  
3 whether now known or unknown, asserted or not asserted, matured or unmatured,  
4 liquidated or unliquidated, at law or in equity, for injunctive relief or damages, whether  
5 before a local, state or federal court, or state or federal administrative agency, commission,  
6 arbitrator(s) or otherwise—that such Plaintiffs now have or may have, and for all times up  
7 to and including the Effective Date of the Settlement, for all claims that were or could  
8 have been asserted relating to the manufacturing, formulation, preparation, handling,  
9 distribution, advertising, marketing, packaging, sale, labeling, promotion, and ingredients  
10 of Kroger Bread Crumbs. Plaintiffs (except for those that have opted out in the manner  
11 provided for herein) also knowingly, expressly, and voluntarily waives all rights under  
12 Section 1542 of the California Civil Code (or similar laws of other States) which states:

13  
14           **A GENERAL RELEASE DOES NOT EXTEND TO**  
15           **CLAIMS THAT THE CREDITOR OR RELEASING**  
16           **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN**  
17           **HIS OR HER FAVOR AT THE TIME OF EXECUTING**  
18           **THE RELEASE AND THAT, IF KNOWN BY HIM OR**  
19           **HER, WOULD HAVE MATERIALLY AFFECTED HIS**  
20           **OR HER SETTLEMENT WITH THE DEBTOR OR**  
21           **RELEASED PARTY.**

22 “Released Persons” includes Defendant and its predecessors, successors, assigns,  
23 parents, owners, subsidiaries, indemnitees, divisions, affiliates, members, investors  
24 (including, but not limited to, affiliated partnerships and joint ventures), agents, agencies,  
25 contractors, and any of their past or present directors, officers, employees, insurers,  
26 attorneys, and anyone working on their behalf.

27       This Release includes all claims that such Plaintiffs and their heirs, successors, and  
28 assigns have, has, or may have against the Released Persons arising out of, in connection  
with, or related in any way, directly or indirectly, to the manufacturing, formulation,  
preparation, handling, distribution, advertising, marketing, packaging, sale, labeling,

1 promotion, and ingredients of Kroger Bread Crumbs, that have been brought, or could  
2 have been brought, in the Litigation against the Released Persons.

3 After entering into this Settlement Agreement, Plaintiffs may discover facts other  
4 than, different from, or in addition to, those that they know or believe to be true with  
5 respect to the Released Claims. Plaintiffs expressly waive and fully, finally, and forever  
6 settle and release any known or unknown, suspected or unsuspected, contingent or non-  
7 contingent claim, whether or not concealed or hidden, without regard to the subsequent  
8 discovery or existence of such other, different, or additional facts. Notwithstanding  
9 Section 1542 of the California Civil Code, or any other federal or state statute or rule of  
10 law of similar effect, this Settlement Agreement shall be given full force and effect  
11 according to each and all of its expressed terms and provisions, including those related to  
12 any unknown or unsuspected claims, liabilities, demands, or causes of action which are  
13 based on, arise from or are in any way connected with the Litigation.

14 **A. Continuing Jurisdiction**

15 The Settling Parties shall agree to continued jurisdiction over the Settling Parties to  
16 this Settlement with respect to the future performance of the terms of this Settlement  
17 Agreement. In the event that any applications for relief are made, such applications shall  
18 be made to the Court.

19 **B. Sole and Exclusive Remedy**

20 Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any  
21 and all Released Claims of Plaintiffs (except for those that opt out in the manner provided  
22 herein), and (b) Plaintiffs (except for those that opt out in the manner provided herein)  
23 stipulate to be and shall be permanently barred and enjoined by Court order from initiating,  
24 asserting, or prosecuting against the Released Persons in any federal or state court or  
25 tribunal any and/or all Released Claims.

26 **C. Personal Injury Exclusion**

27 As the exception to Class Members' broad release, claims of a *Personal Injury*  
28 resulting from a defect in Kroger Bread Crumbs or packaging are specifically not included

1 in the Released Claims.

2 **9. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION  
3 FROM THE SETTLEMENT**

4 Subject to modification by the Court, the Settling Parties agree and stipulate to the  
5 following procedures:

6 **9.1. Procedures for Objecting to the Settlement**

7 Class Members shall have the right to appear and show cause, if they have any  
8 reason why the terms of this Settlement Agreement should not be given final approval,  
9 subject to each of the sub-provisions contained in this section. Any objection to the  
10 Settlement or Settlement Agreement, including any of its terms or provisions, should be  
11 in writing, filed with the Court, with a copy served on Class Counsel, Defense Counsel,  
12 and the Class Action Administrator at the addresses set forth in the Notice, and postmarked  
13 no later than thirty (30) calendar days prior to the Fairness Hearing date. Class Members  
14 may object either on their own or through an attorney hired at their own expense.

15 If a Class Member hires an attorney to represent him or her at the Fairness Hearing,  
16 he or she must do so solely at his or her own expense unless the Court orders otherwise.  
17 No Class Member represented by an attorney should be deemed to have objected to the  
18 Settlement Agreement unless an objection signed by the Class Member is also filed with  
19 the Court and served upon Class Counsel and Defense Counsel at the addresses set forth  
20 in the Notice thirty (30) days before the Fairness Hearing.

21 Any objection regarding or related to the Settlement Agreement should contain (a)  
22 the objector's full name, address and telephone number; (b) the name, address, and  
23 telephone number of any attorney for the objector with respect to the objection; (c) the  
24 factual and legal grounds for the objection(s); (d) documents sufficient to establish the  
25 basis for his or her standing as a Class Member, *i.e.*, verification under oath as to the  
26 approximate date(s) and location(s) of his or her purchase(s) of Kroger Bread Crumbs; (e)  
27 his or her signature or the signature of the objector's counsel, if any; (f) the case name and  
28 case number (*Hawkins v. Kroger Co.*, Case No. 3:15-cv-2320-JM-AHG (S.D. Cal.)); and

1 (g) a list, including case names and numbers, of any other objections by the objector, as  
2 well as by the objector's attorney, to any class action settlements submitted to any state or  
3 federal court in the previous two years. Any objection should also contain information  
4 sufficient to identify and contact the objecting Class Member (or his or her attorney, if  
5 any). Any objections not containing the required information and/or not submitted to the  
6 Court at least thirty (30) days prior to the Fairness Hearing may be deemed waived and  
7 may not be considered by the Court. If an objecting party chooses to appear at the hearing,  
8 that party should, in addition to filing his or her objection, file with the Court, at least  
9 thirty (30) days before the Fairness Hearing, a notice of intent to appear and that notice  
10 must list the name, address and telephone number of the attorney, if any, who will appear  
11 on behalf of that party.

12 **9.2. Response to Objections**

13 Class Counsel and Defendant may respond to any objection, by filing opposition  
14 papers no later than seven calendar days prior to the Fairness Hearing, or on such other  
15 date as set forth in the Preliminary Approval Order, or any subsequent Court order(s)  
16 modifying the briefing schedule for the Fairness Hearing. The Party responding shall file  
17 a copy of the response with the Court, and shall serve a copy to the objector (or counsel  
18 for the objector) to the extent the objector or their counsel do not receive notice of  
19 electronic filing via the Court's ECF filing system.

20 **9.3. Opt-Outs**

21 Any Class Member who does not wish to participate in the Settlement must submit  
22 a Request for Exclusion to the Class Action Administrator, stating an intent to be  
23 "excluded" from this Settlement. The written Request for Exclusion must be sent via first  
24 class United States mail to the Class Action Administrator at the address set forth in the  
25 Notice and postmarked no later than thirty (30) calendar days before the date set for the  
26 Fairness Hearing ("Opt-Out Date"). The Request for Exclusion must be personally signed  
27 by the Class Member and may only be on behalf of such signing Class Member. So-called  
28 "mass" or "class" opt-outs shall not be allowed. Members who "opt-out" will not release

1 their claims pursuant to the Settlement Agreement. Members of the Class who fail to  
2 submit a valid and timely Request for Exclusion on or before the date specified in the  
3 Notice shall be bound by all terms of the Settlement Agreement and Final Judgment and  
4 Order. Every Request for Exclusion must contain his or her (a) full name, (b) current  
5 address, (c) a clear statement communicating that he or she elects to be excluded from the  
6 Class, (d) his or her signature, and (e) the case name and case number.

7 Any Class Member who requests exclusion from the Settlement does not have the  
8 right to object to the Settlement. If a Class Member submits an objection and a written  
9 Request for Exclusion, he or she shall be deemed to have complied with the terms of this  
10 opt-out procedure. His or her objection will be considered void and he or she shall not be  
11 bound by the Settlement Agreement if approved by the Court. However, any objector who  
12 has not submitted a proper Request for Exclusion from the Settlement will be bound by  
13 the terms of the Settlement Agreement upon final approval of the Settlement.

14 **10. FEES, EXPENSES AND INCENTIVE AWARD**

15 In accord with Federal Rule of Civil Procedure Rule 23(h) and relevant case law,  
16 Plaintiff will petition the Court for fees and expenses, separate from the Settlement Fund,  
17 not to exceed \$400,000, and a Representative Plaintiff incentive award not to exceed  
18 \$7,000. Defendant shall not object to or oppose any such petition, provided it does not  
19 exceed these limits, nor take any steps to encourage objectors to do so.

20 Upon a Court order so providing, any award of fees, incentive award, and costs shall  
21 be paid by Defendant within 60 calendar days of the Effective Date.

22 The incentive payment, if awarded, shall be paid separately from fees and costs in  
23 the form of a check sent in the care of Class Counsel made payable to the Representative  
24 Plaintiff.

25 **11. MOTION FOR FINAL APPROVAL AND ORDER**

26 Defendant shall cooperate in good faith with the preparation of the motion for final  
27 approval of the Settlement Agreement.

28 **12. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

1           The Effective Date of this Settlement Agreement shall be the date the Court grants  
2 final approval of this agreement.

3           If this Settlement Agreement is not approved by the Court or the Settlement  
4 Agreement is terminated or fails to become effective in accordance with the terms of this  
5 Settlement Agreement, the Settling Parties will be restored to their respective positions in  
6 the Litigation as of the day before the Motion for Preliminary Approval was filed. In such  
7 event, except with respect to the Class Action Administrator's fees, the terms and  
8 provisions of this Settlement Agreement will have no further force and effect with respect  
9 to the Settling Parties and will not be referenced or used in the Litigation or in any other  
10 proceeding for any purpose, and any Judgment or order entered by the Court in accordance  
11 with the terms of this Settlement Agreement will be treated as vacated. If for whatever  
12 reason the Settlement Agreement fails to become effective, the Settling Parties will split  
13 equally the Class Action Administrator's fees paid prior to that date.

14 **13. MISCELLANEOUS PROVISIONS**

15           A. The Settling Parties acknowledge that it is their intent to consummate this  
16 Settlement Agreement, and they agree to cooperate to the extent reasonably necessary to  
17 effectuate and implement all terms and conditions of this Settlement Agreement and to  
18 exercise their best efforts to accomplish the foregoing terms and conditions of this  
19 Settlement Agreement.

20           B. The Settling Parties intend the Settlement to be a final and complete  
21 resolution of all disputes between them with respect to the Litigation. The Settlement  
22 compromises claims that are contested and will not be deemed an admission by any  
23 Settling Party as to the merits of any claim or defense.

24           C. The Settling Parties agree that the consideration provided to the Class and the  
25 other terms of the Settlement were negotiated at arm's-length, in good faith by the Settling  
26 Parties, and reflect a settlement that was reached voluntarily, after consultation with  
27 competent legal counsel. The Litigation was filed in good faith, was not frivolous and was  
28 in compliance with Rule 11 of the Federal Rules of Civil Procedure. This Settlement

1 Agreement is entered into to eliminate the uncertainties, burdens and expenses of  
2 protracted litigation.

3 D. Any party to the Litigation or any other Released Person may file this  
4 Settlement Agreement and/or the Judgment in any action that may be brought against it in  
5 order to support any defense or counterclaim, including without limitation those based on  
6 principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar  
7 or reduction, or any other theory of claim preclusion or issue preclusion or similar defense  
8 or counterclaim.

9 E. This Settlement Agreement shall be interpreted and enforced in accordance  
10 with the laws of the state of California without regard to its rules regarding conflict of  
11 laws.

12 F. The waiver by one party of any provision or breach of this Settlement  
13 Agreement shall not be deemed a waiver of any other provision or breach of this  
14 Settlement Agreement.

15 G. This Settlement Agreement is governed by the terms of Federal Rule of  
16 Evidence 408 and is for settlement purposes only, and neither the fact of, nor any provision  
17 contained in this Settlement Agreement or its attachments, nor any action taken hereunder  
18 shall constitute, be construed as, or be admissible in evidence as, any admission of the  
19 validity of any claim, defense or any fact alleged by any of the parties in the Litigation or  
20 in any other pending or subsequently filed action or of any wrongdoing, fault, violation of  
21 law, or liability of any kind on the part of any party, or admission by any party of any  
22 claim, defense or allegation made in the Litigation or any other action, nor as an admission  
23 by any of Defendant, the Representative Plaintiff, Class Members, or Class Counsel of the  
24 validity of any fact or defense asserted against them in the Litigation or any other action.  
25 If the Court should for any reason fail to approve this Settlement Agreement in the form  
26 agreed to by the parties, decline to enter the Final Judgment substantially in the form of  
27 Exhibit A and as agreed to by the parties, or impose any condition to approval of the  
28 settlement to which the parties do not consent, or if the Final Judgment and Order is

1 reversed or rendered void, then (a) this Settlement Agreement shall be considered null and  
2 void, (b) neither this Settlement Agreement nor any of the related negotiations shall be of  
3 any force or effect, and (c) all parties to this Settlement Agreement shall stand in the same  
4 position, without prejudice, as if the Settlement Agreement had been neither entered into  
5 nor filed with the Court. Invalidation of any portion of this Settlement Agreement shall  
6 invalidate this Agreement in its entirety unless the parties agree in writing that the  
7 remaining provisions shall remain in full force and effect. If this Settlement Agreement  
8 terminates or is nullified, the Litigation shall revert to the status that existed before the  
9 execution of this Settlement Agreement. Upon nullification of this Settlement Agreement,  
10 Representative Plaintiff shall be free to pursue any claims available to her, and Defendant  
11 shall be free to assert any defenses available to it.

12 H. All agreements made and orders entered during the course of the Litigation  
13 relating to the confidentiality of information will survive this Settlement Agreement.

14 I. This Settlement Agreement and exhibits constitute the entire agreement  
15 among the Settling Parties, and no representations, warranties, or inducements have been  
16 made to any Party concerning this Settlement Agreement or its exhibits other than the  
17 representations, warranties, and covenants covered and memorialized in such documents.  
18 Except as otherwise provided herein, the Settling Parties will bear their own respective  
19 costs.

20 J. Class Counsel, on behalf of the Class, is expressly authorized by the  
21 Representative Plaintiff to take all appropriate action required or permitted to be taken by  
22 the Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly  
23 authorized to enter into any modifications or amendments to this Settlement Agreement  
24 on behalf of the Class that Class Counsel deems appropriate. Each counsel or other person  
25 executing this Settlement Agreement hereby warrants that such person has the full  
26 authority to do so.

27 K. This Settlement Agreement may be executed in one or more counterparts. A  
28 faxed or electronic signature shall have the same force and effect as an original signature.

1 All executed counterparts and each of them will be deemed to be one and the same  
2 instrument. A complete set of original counterparts will be filed with the Court.

3 L. This Settlement Agreement will be binding upon, and inure to the benefit of,  
4 the successors and assigns of the Settling Parties.

5 M. None of the Settling Parties, or their respective counsel, will be deemed the  
6 drafter of this Settlement Agreement or its exhibits for purposes of construing the  
7 provisions thereof. The language in all parts of this Settlement Agreement and its exhibits  
8 will be interpreted according to its fair meaning, and will not be interpreted for or against  
9 any of the Settling Parties as the drafter thereof.

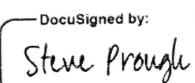
10 N. Plaintiff and Class Counsel agree not to make disparaging public statements  
11 about the Defendant, the Defendant's products, and/or Defense Counsel. Defendant and  
12 Defense Counsel agree not to make disparaging public statements about Plaintiff, Class  
13 Counsel, or the Settlement.

14 IN WITNESS WHEREOF, the Settling Parties have executed and caused this  
15 Agreement to be executed by themselves, approved as to form and content by their  
16 respective attorneys, dated as of April 19, 2021, 2021.

17 Dated: 4-20-21

  
Plaintiff Shavonda Hawkins

20 Dated: 4/19/2021

21 DocuSigned by:  
  
Steven J. Prough,  
Vice President—Legal Services  
The Kroger Co.

FDE3ADBF895A49F

24 APPROVED AS TO FORM AND CONTENT:

25 Dated: 4/19/21

  
26 \_\_\_\_\_  
Gregory S. Weston  
Class Counsel

1  
2 Dated: 4/19/2021

3  
4   
Jacob M. Harper  
5 DAVIS WRIGHT TREMAINE, LLP  
6 Counsel for The Kroger Co.  
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# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SHAVONDA HAWKINS, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

THE KROGER COMPANY,

Defendant.

Case No: 3:15-cv-02320-JM-AHG

**FINAL JUDGMENT**

Judge: The Honorable Jeffery T. Miller

1 IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, HEREBY ADJUDGED AND  
2 DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE RULE 58  
3 THAT:

4 1. The settlement of *Hawkins v. Kroger Co.*, Case No. 3:15-cv-2320-JM-AHG,  
5 pending in the United States District Court, Southern District of California (the  
6 “Litigation”), on the terms set forth in the Parties’ Settlement Agreement, with exhibits,  
7 and definitions included therein, dated April 20, 2021, and filed with this Court on April  
8 20, 2021 is finally approved.

9 2. Pursuant to Rule 58 of the Federal Rules of Civil Procedure (“Rule 58”), the  
10 Court hereby approves the form of judgment and sets forth the judgment in this separate  
11 document, to be entered into the civil docket, pursuant to Rule 79(a).

12 3. The claims in this Litigation are dismissed on the merits and with prejudice  
13 pursuant to the terms set forth in the Parties’ Settlement Agreement and in the Court’s Final  
14 Order Approving Class Action Settlement.

15 4. The Court will retain continuing jurisdiction over the Parties and the  
16 Litigation for the reasons and purposes set forth in the Final Order Approving Class Action  
17 Settlement, without affecting the finality of this Final Judgment.

18  
19 **IT IS SO ORDERED**

20 DATED: \_\_\_\_\_, 2021  
21

22 \_\_\_\_\_  
23 The Honorable Jeffery T. Miller  
24 United States District Court Judge  
25  
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28

# **EXHIBIT B**

1 **THE WESTON FIRM**

2 GREGORY S. WESTON (239944)

3 *greg@westonfirm.com*

4 1405 Morena Blvd., Suite 201

5 San Diego, CA 92110

6 Telephone: (619) 798-2006

7 Facsimile: (619) 343-2789

8 **Class Counsel**

9  
10 **UNITED STATES DISTRICT COURT**  
11  
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 SHAVONDA HAWKINS, on behalf of  
14 herself and all others similarly situated,

15 Plaintiff,

16 v.

17 THE KROGER COMPANY,

18 Defendant.

19 Case No: 3:15-cv-02320-JM-AHG

20  
21 **DECLARATION OF GAJAN RETNASABA IN  
22 SUPPORT OF PLAINTIFF'S MOTION FOR  
23 PRELIMINARY APPROVAL OF CLASS  
24 ACTION SETTLEMENT**

25 Judge: The Honorable Jeffrey T. Miller

26 Date: June 7, 2021

27 Time: 10:00 a.m.

28 Location: Courtroom 5D

1 I, Gajan Retnasaba, declare:

2       1. I am a Partner at Classaura LLC, a class action administration firm. I have  
3 been the project lead on cases including *Mason v. Heel*, *Hilsley v. Ocean Spray*  
4 *Cranberries*, and *In re Quaker Oats Labeling Litigation*. I founded the popular class  
5 action advocacy website ClassActionRebates.com. My prior experience includes being  
6 a litigation associate at Jones Day and a senior associate at McKinsey & Company. I  
7 hold a J.D. from Harvard Law School and a Bachelor of Engineering from the  
8 University of New South Wales.

9       2. I have been asked by Class Counsel in this action to prepare a plan for  
10 class notice and distribution, should judgment for a plaintiff class create a common fund  
11 for the class.

12       **SETTLEMENT WEBSITE**

13       3. I will create a settlement website which will include both a summary and  
14 long-form versions of the settlement notice, that will describe the settlement, describe  
15 the process for making claims, for objecting to the settlement, and for opting out of the  
16 settlement. It will also give notice that an attorney fee application will be made and  
17 describe how class members may obtain a copy of the fee application from the  
18 administrator or online, and how they may oppose the application.

19       4. The website would allow claims to be made entirely online with a form  
20 where class members can file their claim, including uploading proof of purchase if  
21 applicable. The claim form will be secured using 128-bit encryption, which is the  
22 commercial standard. Claim data will be stored in a secure database. The website will  
23 also allow class members to download claim forms that can be printed and submitted by  
24 mail.

25       5. The website will provide email, phone, and postal contacts for class  
26 members to request further information, hard copies of information, or help in the claim  
27 filing process. The website will be updated as needed. For class members who are  
28 unwilling or unable to use the website or make claims online, the settlement notice, in

1 both its long and summary forms, and claim forms will be provided via a toll-free  
2 telephone number.

## CLASS NOTICE

4       6. Facebook is, by far, the media outlet where Californians spend the most  
5 time, with approximately 29 million registered users in the state who use the site at least  
6 once per month.

7       7. Our Facebook ads will provide a notice that a settlement affects the rights  
8 of buyers of Kroger Bread Crumbs and funds are available for online claims. The ads  
9 will be published 8,750,000 times on Facebook, limited to adult California users of  
10 Facebook, and partially targeted to users who are women and over the age of 25. The  
11 notice will also include a link to the class website where consumers can learn more  
12 about the lawsuit.

13        8. Facebook enables advertising to be published to unique individuals so that  
14 duplicate advertisements are not shown to the same person. Thus, the campaign will  
15 reach an estimated 8.75 million California users.

## PRESS RELEASE

17       9. PR Newswire is a national press release service used by journalists as a  
18 source for news. Press releases sent through PR Newswire often end up as articles in  
19 news media websites such as CNBC.com, MarketWatch.com, Reuters.com, Yahoo.com  
20 and local media affiliates of the major television networks ABC, NBC, and CBS. The  
21 press release will contain information about the class settlement and the address for the  
22 dedicated settlement website. I recommend the publication of a national press release on  
23 PR Newswire.

24       10. I further recommend that details of the settlement be forwarded to class  
25 action advocacy websites (such as TopClassActions.com and ClassActionRebates.com)  
26 that are frequently used by members of the public interested in keeping updated on their  
27 eligibility for settlements.

1           **CLRA NOTICE**

2       11. California's Consumers Legal Remedies Act (CLRA §1781) requires  
3 published notice in a newspaper of general circulation in the county of the transaction,  
4 once a week for four consecutive weeks. Accordingly, I will arrange the publication of  
5 the summary notice in an approved San Diego County newspaper of general circulation.

6           **METHODS FOR PREVENTING PAYMENT OF ERRONEOUS,  
7 DUPLICATIVE, AND FRAUDULENT CLAIMS**

8       12. We will use several methods to prevent payment of invalid claims.

9       13. To prevent duplication, all online claims will be loaded into an electronic  
10 database. Claims received by mail would be manually entered into the same database.  
11 An algorithm would then be run to identify duplicate entries, including those that are  
12 not exact duplicates, but involve small variations in names or addresses.

13       14. One type of erroneous claim is an incomplete claim. To the extent  
14 possible, the information contained within the incomplete claims will be used to notify  
15 the submitter of the incomplete claim. A second type of erroneous claim is one that  
16 does not match with a database of United States addresses. Where possible, these  
17 addresses will be corrected, or individuals will be contacted and encouraged to resubmit  
18 a correct claim.

19       15. Fraudulent claims are less significant in cases such as this where monetary  
20 payments are relatively small. Moreover, merely requiring claims forms be submitted  
21 under "penalty of perjury" substantially deters fraud. Nonetheless, fraud can be further  
22 reduced by utilizing fraud detection techniques and rejecting fraudulent claims. The  
23 claims database will be queried to report signs of fraud such as: (1) multiple online  
24 claims made from the same Internet Protocol ("IP") address; (2) multiple highly similar  
25 claims, (3) claims requesting payment be sent to penal institutions, and (4) requiring  
26 claims that request payment be sent to an address outside California provide proof of  
27 their residence in California during the class period. Such claims will be subject to  
28 further manual review.

1 I declare under penalty of perjury of the laws of the United States that the  
2 foregoing is true and correct.

3 Executed on April 20, 2021, in Atlanta, GA.  
4

5  
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11



12 Gajan Retnasaba  
13  
14

DATED: April 20, 2021

Respectfully Submitted,

15 /s/ Gregory S. Weston  
16

17 **THE WESTON FIRM**  
18 GREGORY S. WESTON  
19

20 **Class Counsel**  
21  
22  
23  
24  
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# **EXHIBIT 2**

## **ATTENTION CALIFORNIA BUYERS OF KROGER BREAD CRUMBS**

### **LEGAL NOTICE OF PROPOSED CLASS LITIGATION SETTLEMENT**

*Hawkins v. Kroger Co.*, No. 3:15-cv-2320-JM-AHG (S.D. Cal.)

If you purchased Kroger Bread Crumbs **in California** between **January 1, 2010 and December 31, 2015**, please read this notice. A class action settlement gives you certain rights, including the right to make a claim for your share of a cash settlement fund, and also has certain deadlines. The class action claims that Kroger Bread Crumbs were falsely advertised in violation of California law. The defendant denies this, and the Court has made no decision on these issues. The case was litigated for more than five years, and rather than continue litigating the case in court, the two sides have agreed to a class action settlement. In addition to the cash relief, the defendant has also agreed to make a donation to the American Heart Association.

You now have the following options. First, the attorney who filed the case and was appointed to represent you recommends that you go to the settlement website (KBCLawsuit.com) and file a claim, and then receive a payment estimated at \$17.50 if the Court approves the settlement. Second, you can ignore this notice and do nothing. You will not get a settlement payment, but you will give up the right to sue Kroger over claims related to Kroger Bread Crumbs' labels and advertising, though not for personal injury. Third, you can exclude yourself. If you exclude yourself, you get no settlement payment but keep the right to sue over these claims at your own expense. Finally, you can object to the settlement and tell the judge why you do not want the settlement to be approved.

You can make a claim at **KBCLawsuit.com**, as well as get more detailed information about this case, the settlement, and your options, as this is a summary only. If you need help and cannot access the Internet, you can also ask questions by mail by writing to Kroger Bread Crumbs Litigation, c/o Classaura, 1718 Peachtree St NW #1080, Atlanta, GA 30309 or call 1-833-427-8627. If possible, please consult the website **KBCLawsuit.com** before calling. Do not contact Kroger or the Court, except if you are serving and filing an objection. The deadline to file a claim form is August 9, 2021 but your appointed attorney recommends that you file a claim now if you are eligible so you don't forget later, and to help plan the cash distribution and estimate the settlement claims rate.

# **EXHIBIT 4**

*Hawkins v. The Kroger Co.*

## **SETTLEMENT CLAIM FORM**

### **INSTRUCTIONS FOR CLAIM FORM**

To be eligible to receive a payment from the settlement fund in the above-captioned action, you must file a Claim Form as described below.

1. Please review the Notice of Class Action Settlement (the “Notice”). A copy of the Notice is available at **KBCLawsuit.com**.
2. Accurately complete and sign the Claim Form. The easiest way is to do it online at **KBCLawsuit.com**, but you can also print and mail this form.
3. By signing and submitting this Claim Form, you certify that you are a resident of California who purchased Kroger Bread Crumbs with a front label “0g Trans Fat” claim between January 1, 2010 and December 31, 2015, in California, for your personal and household use, and not for resale or distribution.
4. You further certify that you have not filed a Request for Exclusion and that you are not excluded from the class by virtue of being (1) a judicial officer presiding over the action, (2) a current or former officer, director, agent, representative, employee of the Kroger Company, or other person affiliated with the Kroger Company, or (3) a legal representative, successor, or assign of any such excluded person.
5. To receive a cash payment, you must complete and submit a completed form online at **KBCLawsuit.com**. or mail the completed and signed Claim Form by U.S. Mail, postmarked no later than August 9, 2021 to:

Kroger Bread Crumbs Litigation  
c/o Classaura Class Action Administration  
1718 Peachtree St #1080  
Atlanta, Georgia 30309

6. Your failure to complete and submit the Claim Form online or postmarked mail by August 9, 2021 may preclude you from receiving any payment

*Hawkins v. The Kroger Co.*

## SETTLEMENT CLAIM FORM

**Your Name:** \_\_\_\_\_

**Your Full Mailing Address, Including Zip Code:**  
\_\_\_\_\_  
\_\_\_\_\_

**Your Phone Number:** \_\_\_\_\_

**Your Email Address:** \_\_\_\_\_

**Are you a California citizen who purchased**, between January 1, 2010 and December 31, 2015, Kroger Bread Crumbs with a front label “0g Trans Fat” claim in California, for your personal and household use, and not for resale or distribution?

\_\_\_\_\_ YES

\_\_\_\_\_ NO

If you have receipt or order confirmation from your purchase of Kroger Bread Crumbs, please attach it. Receipts are not required to make claims, but your payment will be higher if you attach your receipt(s).

I hereby certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT 3**

**NOTICE OF PROPOSED CLASS LITIGATION SETTLEMENT**

*Hawkins v. Kroger Co.*, Case No. 3:15-cv-2320-JM-AHG (S.D. Cal.)

United States District Court for the Southern District of California

**THIS NOTICE CONCERNS YOUR LEGAL RIGHTS.  
PLEASE READ IT CAREFULLY.**

*A federal court authorized this Notice. It is not a solicitation from a lawyer.  
YOU ARE NOT BEING SUED.*

---

**IF YOU ARE A CALIFORNIA RESIDENT WHO** purchased, in California, Kroger Bread Crumbs, between January 1, 2010 and before December 31, 2015 (the “Class Period”), for personal or household use and not for resale or distribution, **YOU MAY BE ENTITLED TO A CASH PAYMENT.**

This settlement resolves a lawsuit against The Kroger Company (“Kroger” or “Defendant”) alleging that Kroger Bread Crumbs were falsely advertised.

Kroger denies the allegations and any wrongdoing. Nonetheless, it has agreed to settle to avoid the cost and uncertainty of litigation. The parties have reached a settlement that provides a payment in exchange for a waiver and release of your claims. By participating in the settlement, you waive and release any claims against Kroger concerning the marketing and labeling of Kroger Bread Crumbs.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>SUBMIT A CLAIM FORM BY AUGUST 9, 2021</b>	The only way to get a monetary payment. Postmark or submit your claim form online.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY AUGUST 9, 2021</b>	If you ask to be excluded, you will not get a settlement payment.  You also will not be bound by this case and keep any right you might have to sue related to the claims in this lawsuit.
<b>OBJECT OR COMMENT BY AUGUST 30, 2021</b>	You may file a written objection no later than August 30, 2021 and/or appear at the final approval hearing to tell the Court why you believe the proposed settlement is unfair, unreasonable, or inadequate. If you ask to be excluded, you cannot also file an objection.
<b>DO NOTHING</b>	If you do nothing, you will receive no portion of the settlement fund and, if the settlement is approved, you will also give up any right you maye have to sue regarding any claims that are part of the settlement.

- These rights and options, and the deadlines to exercise them, are further explained in this notice.
- The Court is in charge of this litigation and still has to decide whether to approve the settlement. The settlement benefits will be paid as soon as possible after the Court approves the settlement and after any appeals are resolved.
- If you have any questions, then please read on and visit [www.KBCLawsuit.com](http://www.KBCLawsuit.com).

## **1. Why did I receive this notice?**

If you are a California resident who purchased Kroger Bread Crumbs in any packaging size or iteration during the Class Period, for personal or household use and not for resale or distribution, then you should know about a settlement in this class action and your options.

You also may have received this notice because you requested more information after reading the summary notice about the settlement.

If the Court approves the settlement, and any objections and appeals are resolved, an administrator approved by the Court will distribute settlement payments.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

## **2. What is this lawsuit about?**

The lawsuit alleges that Kroger Bread Crumbs were falsely advertised as containing “0g Trans Fat.”

Kroger denies these allegations, and the Court has made no decision on their merit.

## **3. What is a class action and who is involved?**

In a class action lawsuit, one or more people, called class representatives (in this case Shavonda Hawkins) represent the interests of similarly situated people who have the same claims, but have not filed a lawsuit. Together these people are a class. The person who filed the lawsuit is called the plaintiff and class representative. The company they sue is called the defendant. One court resolves the issues for everyone in the class – except for those people who choose to exclude themselves from the class.

## **4. Why is there a proposed settlement?**

The Court has not decided in favor of either side. Kroger denies all allegations in the lawsuit. Kroger is settling simply to avoid the expense, inconvenience, and inherent risk of litigation, as well as the related disruption to its business. The plaintiff and her attorneys assert that the proposed settlement is in the best interests of the class because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing a lawsuit through trial and any appeals. There would be no guarantee of success for either side if the lawsuit were pursued through trial and any appeals, but both sides would have to deal with expenses and delays.

## **5. How Do I Know If I Am Part of the Proposed Settlement?**

You are a part of the settlement class if you are a California resident who purchased in California Kroger Bread Crumbs during the Class Period of January 1, 2010 to December 31, 2015. The product must have been purchased for personal or household use and not for resale or distribution.

You are not a part of the settlement class if you are (1) any judicial officer presiding over the lawsuit, (2) officers, directors, and employees of Kroger, or (3) any person who properly executes and files a timely request for exclusion.

If you are unsure whether you are included in the settlement class, you can go to [www.KBCLawsuit.com](http://www.KBCLawsuit.com), or you can call 1-833-427-8627, and ask for free help.

## **THE PROPOSED SETTLEMENT BENEFITS**

### **6. What does the proposed settlement provide?**

#### **Settlement Fund**

The proposed settlement will provide for \$780,000.00 to be paid into a settlement fund. Notice and administrative expenses of \$79,635 are to be paid out of this \$780,000 settlement fund. The remaining \$700,365 will be split between individuals who submit valid claim forms.

#### **Payments to settlement class members who submit a valid claim form**

Settlement class members who submit a timely and valid claim will receive an estimated \$17.50 total if their claims are not documented by receipts, and up to \$100 if documented by receipts.

The amount will be adjusted upward or downward so the whole amount is paid out to class members who submit valid claims.

Class members who submit valid claims, but who do not cash the settlement check within 90 days, will have the funds donated to the American Heart Association. In addition to these unclaimed funds, Kroger will make a separate donation of \$21,000 to the American Heart Association.

#### **Incentive Award to the Plaintiff**

Subject to Court approval, class counsel is seeking a \$7,000 incentive award for the class representative, Shavonda Hawkins.

## HOW TO GET A PAYMENT- SUBMITTING A CLAIM FORM

### 7. How can I obtain a portion of the settlement?

Settlement class members who wish to receive a portion of the settlement fund must fully complete and submit a claim form, along with any supporting documentation, August 9, 2021.

You can obtain a claim form on the internet at [www.KBCawsuit.com](http://www.KBCawsuit.com)

Read the instructions carefully, fully complete the form, and submit it online at [www.KBCLawsuit.com](http://www.KBCLawsuit.com).

Alternatively, you may submit your claim form by mailing it to the following address:

Kroger Bread Crumbs Litigation  
c/o Classaura Class Action Administration  
1718 Peachtree St NW #1080,  
Atlanta, GA 30309

### 8. How Can I Obtain a Claim Form?

You can obtain a claim form in one of three ways:

- i. Online: You can make a claim entirely online. Most people use this method. You can also download and print out a claim form at [www.KBCLawsuit.com](http://www.KBCLawsuit.com).
- ii. By phone: Call toll-free, 1-833-427-8627 to arrange for a claim form to be sent to you by either U.S. mail or e-mail.
- iii. By U.S. Mail: You may write to Kroger Bread Crumbs Litigation, c/o Classaura Class Action Administration, 1718 Peachtree St NW #1080, Atlanta, GA 30309. Be sure to include your name and mailing address.

### YOUR RIGHTS AND CHOICES - EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

If you do not want to receive the settlement payment and wish to preserve the right you may have to sue about the labeling of Kroger Bread Crumbs on your own, then you must take affirmative steps to opt out of the settlement.

### 9. How do I exclude myself from the settlement?

To exclude yourself from the settlement class, you must either: (1) send a written request for exclusion that must be received no later than August 9, 2021 to: Kroger Bread Crumbs Litigation, c/o Classaura Class Action Administration, 1718 Peachtree St NW #1080, Atlanta, GA 30309, or (2) submit a request for exclusion online through the settlement website.

Your Request for Exclusion must contain: (1) the name of the lawsuit, *Hawkins v. Kroger Co.*, Case Number 3:15-cv-2320-JM-AHG'; (2) your full name, current address, and telephone number; (3) a clear statement of intention to exclude yourself such as "I wish to be excluded from the Settlement Class"; and (4) your signature. You may also get an exclusion request form at [www.KBCLawsuit.com](http://www.KBCLawsuit.com). You cannot exclude yourself by telephone or by e-mail.

Your request for exclusion must be on behalf of yourself. You may not include multiple persons on a single request for exclusion.

If you ask to be excluded, you will not get a settlement payment and cannot object to the settlement. You may be able to sue (or continue to sue) Kroger in the future.

#### **10. If I don't exclude myself, can I sue Kroger later?**

If you do not properly and timely submit a Request for Exclusion, you waive your right to opt out, you will be deemed to be a member of the settlement class, you give up any right you may have to sue for the claims the settlement resolves, and you will be bound by the terms of the settlement agreement. If you have a pending lawsuit against Kroger, other than this lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this settlement class to continue your own lawsuit. Remember, any request for exclusion must be signed, mailed, and postmarked or submitted online by no later than August 9, 2021. Excluded from the settlement and release is anything to do with a personal injury claim.

#### **11. If exclude myself, can I get a payment from the settlement fund?**

No. If you exclude yourself, you will not receive a payment from the settlement fund.

### **YOUR RIGHTS AND CHOICES - OBJECTING TO THE PROPOSED SETTLEMENT**

#### **12. How do I tell the court that I object to the settlement?**

If you are a member of the Class, you may object to the settlement. In doing so, you must give reasons why you think the Court should not approve it, and the Court will consider your views.

The objection must contain the following:

- (i) a reference, to the name and number of the lawsuit, which is *Hawkins v. Kroger Co.*, Case Number 3:15-cv-2320-JM-AHG;
- (ii) your full, legal name, residential address, telephone number, and email address (and your lawyer's name, business address, telephone number and email address if you are objecting through counsel);

- (iii) a statement describing your membership in the settlement class, including a verification under oath as to the time and place of your purchase, and name of the retailer from whom you purchased Kroger Bread Crumbs;
- (iv) a written statement of all grounds for the objection, accompanied by any legal support for such objection;
- (v) copies of any documents upon which the objection is based and exhibits you will offer at the final approval hearing;
- (vi) a statement of whether you intend to appear at the final approval hearing, and if you are objecting through counsel, you must also state the identity of all attorneys who will appear at the final approval hearing on your behalf;
- (vii) a list of any other objections you or your counsel have submitted to class actions, whether in state or federal court, in the previous two years; and
- (viii) your signature.

If you do not have access to Electronic Case Filing (“ECF”), your objection must be signed and submitted to the Court, along with any supporting documents, so that it is received no later than August 30, 2021 by the Court. Information on how to file case documents is at the Court website at [www.casd.uscourts.gov](http://www.casd.uscourts.gov).

A copy of your objection **must** also be signed and mailed, along with any supporting documents to the settlement administrator and each of the following two addresses, so that it is **received by** August 30, 2021.

Class Counsel

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**13. What's the difference between objecting and excluding?**

Objecting is explaining to the Court why it should deny approval to the settlement, while keeping you a part of the Class.

Excluding yourself simply removes you from the Class. If you exclude yourself, you will not be eligible to file an objection or to appear at the final approval hearing.

#### **14. What happens if I do nothing at all?**

If you do nothing, you will get no payment from the settlement fund. But unless you timely excluded yourself, you also will not be able to start a new lawsuit, continue with a lawsuit, or be part of any other lawsuit against Kroger about the subject matter of this lawsuit ever again.

#### **THE LAWYERS REPRESENTING YOU**

#### **15. Do I have a lawyer in this case?**

The Court has appointed The Weston Firm as legal counsel for the settlement class. The law firm is called Class Counsel.

#### **16. How will the lawyers be paid?**

Class Counsel has not yet received any payment for prosecuting this lawsuit, nor been reimbursed for expenses like expert witness and filing fees. When they ask the Court to approve the settlement, Class Counsel will also make a motion to the Court to approve and award fees and expenses of up to \$400,000. This amount, if the Court approves it, will be paid by the Defendant. No matter what the Court decides, the attorneys will not be asking you to pay them money. Class counsel will seek final approval of the settlement on behalf of all members of the settlement class. You may hire your own lawyer to represent you in this lawsuit if you wish, but it will be at your own expense.

#### **THE COURT'S FINAL APPROVAL HEARING**

#### **17. When and where will the court decide whether to approve the settlement?**

The Court overseeing this case will hold a final approval hearing at the federal courthouse located at the U.S. District Court for the Southern District of California, 221 W. Broadway, San Diego, CA 92101 in Courtroom 5D on September 27, 2021 to decide whether the settlement is fair, reasonable, and adequate, as well as to determine the amount of attorney fees and costs and incentive award. If there are objections, the Court will consider them at the final approval hearing. After the final approval hearing, the Court will decide whether to approve the settlement and whether to grant class counsel's request for fees and expenses. We do not know how long it will take the Court to make these decisions.

#### **18. Do I Have to Come to the Hearing?**

You are not required to attend the hearing, but you are welcome to attend at your own expense. If you support the settlement, the best way to show this is by submitting a valid claim for a settlement payment on the settlement website.

If you send an objection, you do not have to appear in Court to present it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend.

#### **FINAL SETTLEMENT APPROVAL**

##### **19. What is the effect of final settlement approval?**

If the Court grants final approval of the settlement and all appeals have been exhausted, the Released Parties (as defined in the Settlement Agreement) will be released of and from any and all claims asserted or which could have been asserted in the litigation, including all claims relating to the manufacturing, preparation, handling, distribution, advertising, marketing, packaging, sale, labeling, promotion, and ingredients of Kroger Bread Crumbs. Class Members' claims of a *personal injury* resulting from a defect in Kroger Bread Crumbs or their packaging are specifically not included in the Released Claims.

If the Court does not approve the settlement, this lawsuit will proceed as if no settlement had been attempted.

If the settlement is not approved and litigation resumes, there is no guarantee of payment to the settlement class.

#### **GETTING MORE INFORMATION**

##### **20. Are there more details about the settlement?**

This Notice is only intended to provide a summary of the proposed Settlement. You may obtain the complete text of the settlement agreement at [www.KBCLawsuit.com](http://www.KBCLawsuit.com).

The settlement website located at [www.KBCLawsuit.com](http://www.KBCLawsuit.com) also has the settlement payment claim form, the request for exclusion form, and several of the key documents from the case such as the Class Action Complaint.

You may also contact the Settlement Administrator by email at: [Contact@KBCLawsuit.com](mailto:Contact@KBCLawsuit.com), or by writing to Kroger Bread Crumbs Litigation, c/o Classaura Class Action Administration, 1718 Peachtree St NW #1080, Atlanta, GA 30309.

**PLEASE DO NOT CALL OR DIRECT ANY INQUIRIES TO THE COURT.**

**This notice is given with the approval and at the direction of the Court.**